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OFFICE OF PETITIONS

In re Application of
Saville
Application No. 10/015,143
Filed: December 10, 2001
Docket No.: 47451/VGG/N123

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: DECISION ON PETITION
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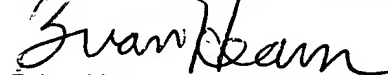
This is a decision on the petition under 37 CFR 1.137(b), filed September 23, 2004, seeking revival of the above-identified application.

The petition is **granted**.

This application became expressly abandoned on June 24, 2003, upon the recognition of the letter of express abandonment signed by the above-named inventor requesting that the above-identified application be expressly abandoned as of the filing date of that communication. The letter of express abandonment was recognized by an appropriate USPTO official in the acknowledgment of express abandonment mailed February 22, 2004.

Petitioner's contention that, given that this application was assigned to Nor'East Miniature Roses Inc., the named inventor was "without authority" to sign the letter of express abandonment, is not well taken. The controlling regulation, 37 CFR 1.138 specifically states that the inventor, per 37 CFR 1.33(b)(4), may sign a letter of express abandonment except where the assignee of the entire interest has intervened as permitted by 37 CFR 3.71. Note that 37 CFR 1.33(b) indicates that the assignee or, in the disjunctive, the inventor, may sign papers such as an express abandonment. Furthermore, the mere recordation of an assignment with the USPTO is not an intervention by the assignee to the exclusion of the named inventor within the meaning of 37 CFR 3.71. See MPEP 324. Accordingly, as the assignee had not intervened in this application at the time the letter of express abandonment was filed, the named inventor had the requisite authority under the rules of practice to expressly abandon this application. Nevertheless, the assignee correctly points to its continuance of prosecution and, as such, its request that this application be revived and passed to issue will be favorably treated.

Inquiries related to this decision may be made to the undersigned at (571) 272-3217.


Brian Hearn
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for Patent Examination Policy